DOCKET NO: NNH-CV17-6072389-S	:	SUPERIOR COURT
	:	
ELIYAHU MIRLIS	:	J.D. OF NEW HAVEN
	:	
V.	:	
	:	AT NEW HAVEN
YESHIVA OF NEW HAVEN, INC. FKA	:	
THE GAN, INC. FKA THE GAN	:	
SCHOOL, TIKVAH HIGH SCHOOL AND	:	
YESHIVA OF NEW HAVEN, INC.	:	JULY 19, 2019

DEFENDANT'S OBJECTION TO MOTION TO PRECLUDE EXPERT TESTIMONY OR IN THE ALTERNATIVE FOR A PROTECTIVE ORDER AND TO MODIFY SUBPOENAS

The defendant, The Yeshiva of New Haven, Inc. (the "Yeshiva" or the "Defendant"), hereby objects to the *Motion to Preclude Expert Testimony or in the Alternative for a Protective Order and to Modify Subpoenas* (the "Motion"), filed by plaintiff, Eliyahu Mirlis ("Mirlis" or the "Plaintiff").

The Court should deny the Motion because: (a) it impermissibly shifts the burden of proof to the Defendant with respect to Plaintiff's seeking of a judgment of strict foreclosure; (b) it incorrectly states that Defendant has "refused" to identify putative expert witnesses; and (c) seeks to deprive Defendant of statutory rights. Accordingly, the Court should deny the Motion and order Plaintiff's experts to appear for their depositions as scheduled so that Defendant may promptly file its expert disclosures.

I. STATEMENT OF FACTS

On June 6, 2017, final judgment entered against the Yeshiva and Daniel Greer ("Greer") in the U.S. District Court case styled *Eliyahu Mirlis v. Daniel Greer, et al.,* Case No. 3:16-CV-00678 (the "District Court Case") in the amount of $21,749,041.10 (the "Judgment"). Subsequently, on June 28, 2017, Greer and the Yeshiva filed a motion for new trial in the District Court Case pursuant to Fed. R. Civ. P. 59(a) (the "New Trial Motion") seeking either an order

granting a new trial or remittitur of the Judgment on the basis that the evidence could not fairly support the jury's award of non-economic damages.

On July 7, 2017, Plaintiff filed a certificate of judgment lien (the "Judgment Lien") against the property owned by Defendant at 765 Elm Street, New Haven, Connecticut (the "Property") with the Office of the City Clerk for the City of New Haven, Connecticut. Thereafter, on July 27, 2017, Plaintiff initiated the instant action by filing a complaint seeking foreclosure of the Judgment Lien. On October 27, 2017, Greer and the Yeshiva filed a motion for relief from final judgment (the "Motion for Relief") in the District Court Case on grounds that newly-discovered evidence had been brought to the attention of Greer and the Yeshiva thereby warranting relief under Fed. R. Civ. P. 60(b)(2). On November 8, 2017, Plaintiff filed his Motion for Summary Judgment in the instant case.

The District Court heard oral argument on the New Trial Motion and Motion for Relief on December 8, 2017 and denied both motions. As such, on December 15, 2017, Greer and the Yeshiva filed a Notice of Appeal indicating that Greer and the Yeshiva seek review by the United States Court of Appeals for the Second Circuit from the Judgment and the District Court's denial of the New Trial Motion and Motion for Relief. The appeal is pending.

On June 13, 2019, Plaintiff filed a Motion for Judgment of Strict Foreclosure, together with an appraisal suggesting the Property was worth more than $900,000. Doc. Nos. 113, 114. Defendant objected and moved to substitute a cash bond pursuant to Conn. Gen. Stat. § 52-380e and attached the executive summary of an appraisal provided to Plaintiff earlier. Doc. No. 115. Patrick Wellspeak, MAI, a well-known appraiser, was the signatory of the appraisal, dated September 12, 2017. A hearing on the Motion for Judgment of Strict foreclosure was held June 20, 2019, and a hearing on valuation was scheduled for August 23, 2019.

On June 26, 2019, counsel for Defendant emailed counsel for Plaintiff requesting dates to depose Plaintiff's appraisal experts. After dialog, Plaintiff refused to make his experts available for deposition claiming both parties should submit reports prior to depositions. Attached hereto as Exhibit A is the email dialog between counsel. However, given the conclusions in Plaintiff's appraisal – including the disregard of recent comparable sales in the City of New Haven and fundamental factual inaccuracies – it is only fair that Defendant understands Plaintiff's appraisers' unorthodox methodologies prior to completing its report.

II. LAW AND ARGUMENT

A. The Burden is on Plaintiff With Respect to its Motion for Judgment of Strict Foreclosure

To obtain strict foreclosure, the burden of proof is on Plaintiff to establish value of the property at issue. Practice Book § 23-16; *see Mechanics Sav. Bank v. Tucker*, 178 Conn. 640, 644 (1979) (burden of proof in foreclosure actions does not change after default).

At the hearing on August 23, 2019, Defendant will likely seek to preclude Plaintiff's appraisal in its entirety as it does not comport with typical appraisal standards. However, before doing so, a deposition of the appraiser is necessary to understand his (their) decision making process. For example, although two religious schools were recently sold in New Haven, these sales were excluded as "below market" with no reasoned explanation in the report. Yet, sales from distant locations and suburban settings were used.

Defendant has every right to seek to exclude the Plaintiff's appraisal report, which would preclude strict foreclosure. Defendant can seek this relief without disclosing *any* expert of its own.

B. Defendant is Entitled to Depose Plaintiff's Experts to Prepare its Case

Defendant is not seeking some extraordinary remedy. It is seeking to take expert depositions so that its own experts can understand the esoteric appraisal submitted by Plaintiff. Rather than simply cooperating to bring this matter to conclusion, Plaintiff attempts to deflect by suggestion Defendant has done something wrong. After telling the Court that Defendant's principal is a bad person, Plaintiff asks this Court to ignore the requirements of the Practice Book and General Statutes to suit its needs.

First, Plaintiff sets forth many statements in its Motion that appear to be assumptions, not facts. For example, that "Plaintiff is informed that Defendant had an environmental investigation…." Motion at 5. However, Defendant's counsel informed Plaintiff's counsel, and this Court, that it was in the process of retaining an engineer, not that an "investigation" had occurred and was completed.

Defendant expects to retain its consultant this week (due to the 4th of July holiday and the consultant's subsequent vacation he was unavailable until this week). Once retained, Defendant will share the name of the consultant. Obviously, Defendant will disclose a report once obtained. Lastly, Plaintiff knows Mr. Wellspeak is Defendant's appraiser.

Second, Plaintiff suggests Defendant should be sanctioned, on account of Plaintiff apparently abandoning its foreclosure of the Property between January 2018 and June 2019. The November 2017 Motion to Substitute Bond (Doc. No. 106) was filed in response to the Motion for Summary Judgment filed by Plaintiff. At that time it was unnecessary for Defendant to pursue its Motion to Substitute. Indeed, it was at that time that the initial appraisal of the Property was obtained by Defendant, which was shared with Plaintiff.

In sum, Plaintiff hopes this Court will ignore statutes, due process, and notions of fair play, because Defendant is unlikeable. However, the record of this case reflects only that Defendant has responded appropriately to Plaintiff's pursuit of this case. There is no obligation that a defendant in a foreclosure action press the case to completion. As stated in Defendant's Objection to Motion for Strict Foreclosure (Doc. No. 115) at 5: "a deposition of Plaintiff appraiser is necessary to ascertain whether the appraisal is even determinative of value. Thereafter, the Yeshiva intends to disclose its own expert appraiser and environmental engineer to provide the Court with a true measure of fair market value. Accordingly, a period of discovery and an evidentiary hearing is necessary." Thus, it can be no surprise to Plaintiff or the Court that Defendant wanted to depose Plaintiff's expert first.

III. CONCLUSION

For the above reasons, the Court should deny the Motion and order that Plaintiff comply with the Subpoenas.

THE DEFENDANT:
The Yeshiva of New Haven, Inc. fka The Gan, Inc., fka The Gan School, Tikvah High School and Yeshiva of New Haven, Inc.

By: /s/ Jeffrey M. Sklarz

Jeffrey M. Sklarz
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New Haven, CT 06511
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CERTIFICATE OF SERVICE

This is to certify that on July 19, 2019, a copy of the foregoing was sent to all appearing parties and counsel of record as follows via electronic email:

Matthew Beatman
John L. Cesaroni
Zeisler & Zeisler, P.C.
10 Middle Street, 15th Floor
Bridgeport, Connecticut 06604
mbeatman@zeislaw.com
jcesaroni@zeislaw.com

/s/ Jeffrey M. Sklarz

EXHIBT A

Jeffrey Sklarz

From: Jeffrey Sklarz
Sent: Monday, July 1, 2019 3:01 PM
To: John L. Cesaroni
Cc: Matthew Beatman; Lawrence Grossman; Kellianne Baranowsky
Subject: RE: Mirlis v. Yeshiva

John

I cannot disclose an appraiser before understanding the basis of your valuation. Your appraiser used an unorthodox method to say the least. I'm not sure how to get beyond that. You have our appraisal from last year. I am happy to talk. I cannot do today, but tomorrow afternoon I am open

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From: John L. Cesaroni [mailto:jcesaroni@zeislaw.com]
Sent: Monday, July 01, 2019 2:25 PM
To: Jeffrey Sklarz <jsklarz@gs-lawfirm.com>
Cc: Matthew Beatman <MBeatman@zeislaw.com>; Lawrence Grossman <lgrossman@gs-lawfirm.com>; Kellianne Baranowsky <kbaranowsky@gs-lawfirm.com>
Subject: RE: Mirlis v. Yeshiva

Jeff,

I am not sure exactly what you mean by saying that is not how this works. We have a situation where it is not just the plaintiff seeking to foreclose and establish value, but rather, you are affirmatively seeking to have my client's judgment lien substituted for a bond – which is really the basis for the valuation hearing as there can be no real dispute that the property should go by strict foreclosure, rather than by sale. I think that under the circumstances it is reasonable for each side to have the other's appraisal (and environmental report in your case) and exchange documents prior to depositions commencing. If you insist upon deposing our appraisers before we have even seen your appraisal and phase

I, we will oppose that. That said, I am happy to discuss this with you as I think our approach is fair, and I would like to avoid any resort to court intervention unnecessarily.

John

John L. Cesaroni
jcesaroni@zeislaw.com
203-368-4234
203-549-0432 (fax)

From: Jeffrey Sklarz <jsklarz@gs-lawfirm.com>
Sent: Monday, July 01, 2019 10:17 AM
To: John L. Cesaroni <jcesaroni@zeislaw.com>
Cc: Matthew Beatman <MBeatman@zeislaw.com>; Lawrence Grossman <lgrossman@gs-lawfirm.com>; Kellianne Baranowsky <kbaranowsky@gs-lawfirm.com>
Subject: RE: Mirlis v. Yeshiva

John
That's not how it works. I need to depose your appraiser to gather the information necessary for my expert(s) to prepare reports. You can then depose my experts. If you are not agreeing to this, let me know and I'll issue a subpoena.

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From: John L. Cesaroni [mailto:jcesaroni@zeislaw.com]
Sent: Monday, July 01, 2019 10:14 AM
To: Jeffrey Sklarz <jsklarz@gs-lawfirm.com>
Cc: Matthew Beatman <MBeatman@zeislaw.com>
Subject: RE: Mirlis v. Yeshiva

Jeff,

Before our appraisers are deposed, we are going to need your appraisal report and phase I. Can you let me know when we can expect those so that we can schedule a date for depositions after that has been done? Also, we need to discuss the exchange of documents, such as the appraisers' work papers.

John

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203-549-0432 (fax)

From: Jeffrey Sklarz <jsklarz@gs-lawfirm.com>
Sent: Wednesday, June 26, 2019 4:10 PM
To: John L. Cesaroni <jcesaroni@zeislaw.com>
Subject: Mirlis v. Yeshiva

John

Please provided de me dates that your appraisers, there are 2, are available for depsoitions during July. Thank you.

Jeffrey M. Sklarz
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Total Control Panel Login

To: jcesaroni@zeislaw.com Remove this sender from my allow list
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